

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

M.D., b/n/f Sarah R. Stukenberg, et al.,	§	
	§	
Plaintiffs,	§	
v.	§	
	§	
GREG ABBOTT, in his official capacity	§	Civil Action No. 2:11-CV-00084
as Governor of the State of Texas, et	§	
al.,	§	
	§	
Defendants.		

Monitors' Update to the Court Regarding HL

On February 22, 2024, a stakeholder alerted the Monitors that a six-year-old child (HL) was without a licensed placement and living in a hotel in Austin. The stakeholder indicated the child was on the autism spectrum and had significant behavioral challenges. The Monitors reviewed information provided by DFPS regarding children without a licensed placement and determined that HL was a PMC child who was placed in a CWOP Setting on February 14, 2024.

I. HL's History in Care

HL has been in care since 2019. According to her most recent Common Application, HL was removed from her home after being exposed to her parent's "ongoing violence." HL's mother accused her father of rape, but later recanted and resumed her relationship with him. HL's Sexual Incident History page in IMPACT does not list any confirmed incidents of sexual abuse, but notes the following in the "additional relevant information" section:

On February 12, 2019, the Department received a referral alleging sexual abuse of [HL] by her father...The referral alleged that [HL's mother] called law enforcement seeking assistance because [HL's father] raped her on February 11, 2019. [HL's mother] subsequently recanted her rape allegation and went back to [HL's father]. The allegation of sexual abuse of [HL] by [her father] was ruled out.

HL's Common Application notes that while she does not have any confirmed incidents of sexual victimization, "she demonstrated hypersexualized behaviors and discussions...in a prior foster home, which included exploring her body and poor boundaries with the foster placement."

DFPS placed her in foster homes until May 18, 2023, when it appeared foster homes were unable to manage her behaviors (based on a preliminary review of her record).

Since May 2023, the child has been placed in RTCs and most recently in a CWOP Setting. Her most recent RTC placement was at Helping Hand Home for Children RTC (5/26/2023 to 2/14/2024). State records indicate the RTC discharged the child due to her “behavior.” Shortly before her move, there was a request that the child’s level of care be increased to Intense Plus based upon the child’s behavior. The request stated:

For reporting period 12/1/2023-01/29/2024, [HL] has had 157 serious incidents, 70 of them resulting in physical containments. Despite her age, physical containments require more than one staff member to keep [HL] and staff safe. [HL] has no boundaries and constantly breaks the rules, even after providing her redirection. When asked to stop, [HL] will argue or say no and will shut down. She will cry and scream, ignore her staff, and will stay crying for several hours. [HL] will kick, hit, and scratch anyone around her when upset. She is always testing boundaries, is overly emotional, not easy to please, loses control fast, and demands constant attention. She gets on top of peoples’ legs, grabs at their private parts and one time she showed her private parts to a peer. She must be in close sight, with some focused attention, at all times.

A. Investigation History

Since entering care in 2019, HL has been involved in four investigations of alleged abuse or neglect, as detailed below.

Case ID	Intake Date	Close Date	Allegation Type	Allegation Detail	Finding
49889267	11/18/2023	Remains Open	Physical Abuse	A staff member at Helping Hand Home for Children, an RTC, reported that HL (age 5) was injured during a restraint. The child was observed with a “contusion or very deep bruise” on her left wrist.	Pending
49750175	8/04/2023	10/24/2023	Neglectful Supervision	A staff member at Helping Hand Home for Children, an RTC, reported that HL (age 5) hit another child (age 11), who responded by pushing HL. As a result, HL fell onto her back from the push and hit her head on a plastic trash can. Staff members observed HL “having full body	Ruled Out The investigator found that staff members were present at the time of the incident

				cringing” and took her to the hospital. Medical personnel did not report concerns for the child’s health. Child complained of head pain.	and responded appropriately.
49353705	10/06/2022	10/30/2022	Physical Abuse	An attorney reported that HL (age 4) stated that her foster parent punched her in the face. Child stated that she did not feel safe. No visible injuries were observed on the child.	Ruled Out The investigator did not find evidence of Physical Abuse: the child and foster parent denied the allegation when interviewed.
48268715	6/26/2020	8/05/2020	Neglectful Supervision	Foster parents found HL (age 2) opened a child-proof bottle of cough medicine and spilled it on the floor and her clothes. Foster parents did not know whether the child had ingested any medication and took her to the Emergency Room. Medical personnel did not have concerns and later released the child.	Ruled Out The investigator did not find that the foster parents failed to adequately supervise the child when she may have ingested cough medicine. Medical personnel did not report any concerns for the child or the foster parents.

B. Placement History

While in DFPS care, HL has experienced at least 11 placements and two episodes of DFPS supervision in a CWOP Setting.

Start Date	End Date	Placement
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02/14/2024		DFPS Supervision, CWOP Setting
05/26/2023	02/14/2024	Helping Hand Home for Children RTC
05/19/2023	05/26/2023	New Horizons Audrey Grace House RTC
05/18/2023	05/19/2023	DFPS Supervision, CWOP Setting
10/12/2022	05/18/2023	Therapeutic Foster Home 2
07/01/2022	10/12/2022	Therapeutic Foster Home 1
09/24/2021	07/01/2022	Treatment Foster Home
07/08/2021	09/24/2021	Foster Home 5
06/02/2021	07/08/2021	Foster Home 4
05/14/2021	06/02/2021	Foster Home 3
12/08/2020	05/14/2021	Relative's Home
04/23/2020	12/08/2020	Foster Home 2
07/09/2019	04/23/2020	Foster Home 1

II. HL's most recent placement in a CWOP Setting

On February 14, 2024, HL was moved from Helping Hand Home for Children RTC to a hotel in Austin. HL's departure from the RTC was not abrupt; after the operation put in a 14-day discharge notice, they granted DFPS's request for a two-day extension. DFPS requested a second extension, which the operation denied.

Though she was moved to the hotel in the middle of the day on February 14, 2024, the first shift logs provided by DFPS to the Monitors for HL do not begin until the midnight to 4:00 a.m. shift on February 15, 2024.

HL's shift log notes that the six-year-old child is "outgoing and playful." She "enjoys playing with dolls and kitchenette," "likes to go outside and play and explore...play dress up" and "likes to color and do arts and crafts." HL, like many six-year-olds, "sometimes needs assistance with dressing, she will wear clothes backwards if not guided." She also needs assistance bathing because, if she is not given guidance, "she will not scrub and only play."

HL's shift log notes that she "needs constant supervision" and that when she is upset, HL "will poop or pee herself." She also needs assistance with hygiene when she goes to the bathroom. This presented problems early in the child's stay in the CWOP Setting: notes state, "Caseworker...noted concerns as there appears to be two male workers assigned and

neither male will be touching [HL]. Caseworker...deferred these concerns to the on-call Supervisor.”

On February 16, 2024, the following note was added to HL’s shift log and highlighted:

[HL] has severe behavioral issues and is diagnosed with Autism. [HL] needs a structured routine and needs attention. [HL] is verbal and communicate[s] needs and wants effectively. [HL] will throw tantrums if she can’t get what she wants immediately or if she is told no. The key is to stay firm and say no or give an alternative choice. She will cry and throw a tantrum, but sometimes you will let her cry. When [HL] is upset sometimes, she will intentionally urinate on herself or poop herself. [HL] can become physically and verbally aggressive. When [HL] is upset, try to distract her with activities such as arts and crafts or play a game with her. [HL] likes pouring water into a [bowl]. [HL] will constantly tell that she is hungry even when already ate. [HL] uses food for comfort.

The shift log also cautions, “BOTH STAFF SHOULD BE WITH [HL] AT ALL TIMES UNLESS SHE IS SLEEPING. She will attempt to open the door and leave the room, staff should not allow her to leave the room.”

HL is not attending school, according to her shift log. Helping Hand Home for Children RTC has its own on-campus charter school; state records appear to show the child has not been enrolled in school since leaving the RTC. HL’s time in the hotel is spent watching movies, cartoons, music videos, and YouTube. She also dances and plays with her doll. Because she has a tendency to run from staff, her caseworker has cautioned that she cannot be taken to the store or on outings without calling the caseworker first to check in.

On her first day in the CWOP Setting, staff took her to a park to play, but HL appeared disinterested, and asked to leave. As they were leaving the park, she asked one of the staff to pick her up and carry her. The staff person declined, and HL walked to the car. A contact note entered in IMPACT by a caseworker on February 15, 2024, states:

I met with [HL] at her CWOP location in South Austin. When I initially arrived. She was on an outing to the park with the CWOP staff. They arrived back at the hotel about 30 minutes after I arrived. My first sight of [HL], she presented to be drowsy or sleepy. The staff reported that she had just taken her medication prior to them leaving and she told them she was tired when they were out, so they brought her back to the room to rest.

I called and spoke with [HL’s] worker while I was there to get some information on [HL] and her case. She reported that [HL] was diagnosed with autism in October 2023. She stated that [HL] does well [if] she has a visual of how much time she has before starting a task or moving to another task. We discussed her current medications. She stated that she also has

concerns about the amount of meds that [HL] is on. She stated that her understanding is that the doctors have not been able to come up with her “perfect cocktail” of medications to treat her. She stated that sometimes the placement would call to ask permission to administer medication because other meds were not working for her. We discussed some of the things that [HL] enjoys and uses as sensory activities. We also discussed school....She struggles in large groups or settings. The caseworker and I discussed that she will likely benefit from a placement that can provide one on one or small capacity settings.

HL’s shift logs indicate she is prescribed five psychotropic medications. HL’s medications are documented as:

Aripiprazole	5 mg	6 AM	Mood stabilizer
Cetirizine	10 mg	As needed	Allergies
Clonidine	.5 mg BID	7 AM 12n	Mood
Clonidine	.2 mg	7 PM	Mood
Divalproex DR	250 mg	7 AM, 7 PM	Mood/sleep
Fluticasone HFA	44 mcg BID	7 AM, 7 PM	Mood/sleep ¹
Escitalopram Oxalate	5 mg	6 AM	Mood
Ventolin HFA	90 MCG (inhaler)	As needed	Asthma

The staff who supervised HL in the hotel noted ongoing issues related to administration and storage of her medications. On February 16, 2024, the notes for the 4:00 a.m. to 8:00 a.m. shift state, “At 6:11 a.m. – [caseworker] administered [HL] Aripiprazole 5 mg, Clonidine HCL .2 mg, Divalproex Sodium DR 250 mg, Escitalopram 5 mg. The pill packs have different medications listed for 6 am that do not match the chart above in the channel. The pill packs have 4 medications in them highlighted for 6 am but the chart shows 5 total medications in the AM.” Earlier that day (during the 12:00 a.m. to 4:00 a.m. shift), staff document “[HL] took her meds and these were being kept on top of the fridge. There was no med box for [HL].”

Shift log notes for the next day, February 17, 2023, have the following note added in bold red type at the top of the log:

This is [name omitted], lead CWOP for Saturday. I am using [name omitted’s] computer to send this. We are giving [HL] her meds this evening but there are a lot of inconsistencies between what is written in the log and what the bottles of medication say. Also, I think that on the log, the meds and their reasons are not all lined up correctly. Tonight, she was given Clonidine half and Divalproex. She will be evaluated to determine if she needs her inhaler. Please review her meds on site and what is listed in the logs so that it is not confusing for staff.

¹ This appears to have been mismarked early in the shift log notes. This medication is typically used to relieve allergies.

On February 18, 2024, during the 8:00 a.m. to 12:00 p.m. shift, staff noted, “The staff let incoming staff know that they were unable to find [HL’s] med box and was only able to give her the half of Clonidine that was left on the table by the previous staff before the 4a – 8a shift.” During the same shift, the staff noted, “[HL’s] meds could not be found, and the keys were missing as well. [Caseworker] received a call from the lead and said the meds were above the microwave or the fridge and [caseworker] was able to locate the medications that were not in a med box, they are in a ziplock bag.”

Aside from going to the lobby to eat breakfast, HL does not appear to leave the hotel room. On the second day at the hotel, HL asked to go to the park multiple times, but was told she could not go. Notes indicate she “attempted to leave the room on multiple occasions, while crying loudly.” Notes also indicate that when a staff person called HL’s caseworker to ask if HL could be allowed to go outside, the caseworker responded that, “[I]t would not be a good idea as she does not know how [HL] will act in public.”

Finally, on her third day in the hotel room (February 17, 2024), staff took HL on a 10-minute walk “to the basketball court” when she tried to leave the room.² This appears to be HL’s last time outside the hotel, until shift log notes for the 4:00 p.m. to 8:00 p.m. shift on February 20, 2024 indicated that “Staff was helping pack because [HL] was being placed.” The notes indicate that staff helped “place the suitcases in the trunk and watched [a caseworker] strap [HL] in her car seat.” Staff note that they waved goodbye to the child at 4:15 p.m. Inexplicably, the shift log notes continue for the 4:00 to 8:00 p.m. shift but indicate “Workers arrived on time. [HL] was not at home at the start of shift.” Notes for the next shift (8:00 p.m. to 12:00 a.m.) simply note that HL watched a movie until 9:00 p.m., when she fell asleep on the couch. There is no explanation for the child’s return to the CWOP Setting.³

Supervising a six-year-old child who has a history of recurrent trauma and is on the autism spectrum is challenging even in a structured, home-like setting, with consistent, well-trained caregivers. But, as the shift log notes show, the hotel room, staffed by a constant rotation of caregivers is a restrictive and poor setting for a child with these high needs, particularly given the lack of structure (and no school) and the assigned staff’s inability to safely supervise the child outside of the hotel. The shift log notes on the staff’s ongoing difficulty finding the child’s medications and inconsistencies between the medication administration logs and the directions on the medication bottles raise serious child safety issues.

² A note was added to her shift logs on February 17, 2024, under the heading “Social Restrictions,” which states:

[HL] has severe behavioral issues and is diagnosed with Autism. I am ok with [HL] going to parks that are small and gated. [HL] has a tendency to run. [HL] cannot handle trips to stores such as the mall or Walmart. [HL] will have a tantrum and will run if you tell her, it’s time to go or she can’t have something.

³ HL’s IMPACT records do not show a placement move. However, it is possible that she was moved to a different CWOP Setting. Shift log notes for February 21, 2024 seem to indicate she is in a home, rather than a hotel. It is possible that she was moved to a different CWOP Setting.

Shift log notes show that staff resorted to moving furniture in front of doors, the refrigerator and drawers – all in an attempt to keep the child from engaging in behavior that they had difficulty de-escalating or controlling. On February 18, 2024, during the 4:00 a.m. to 8:00 a.m. shift, a staff person sat on a stool in front of the door to the room “to prevent [HL] from running out.” When the child began to throw things at the face of one of the staff members, “everything was removed from the main area and the table staff sat at was positioned in a way to prevent access to the fridge, cabinet and stove.” Staff position the large table in front of the stove to prevent her from “turn[ing] the knobs on for the burner.” Staff moved “all items including the suitcase of toys...behind the table and out of reach” to prevent her from throwing things. HL then started to hit a staff member in the face, so the staff “set her inside the spare room that has nothing in it, with the door cracked and staff feet propped where we could see her sitting against the door in plain sight and out of reach of any items.” This occurred during a shift (discussed above) when the supervising staff could not find the child’s medications. The child eventually calmed.

On February 19, 2024, during the 8:00 a.m. to 12:00 p.m. shift, staff noted that HL was throwing the television remote. The staff person suggested, “She needs to be provided with comfort toys and items that work for autism, like a weighted blanket, stuffed squishy animals, fidget toys, etc.”

Finally, on February 21, 2024, HL became so dysregulated that her shift logs indicate the staff who were supervising her “call[ed] 911 to get assistance to prevent [HL] from hurting herself.” HL was throwing items, hitting, punching, and scratching staff, and started hitting the windows and walls. The police arrived and left 25 minutes later. At 6:00 p.m. that day, the shift log indicates that staff began to pack her belongings to prepare her for a move to a different CWOP Setting. At 10:25 p.m., HL arrived at another hotel; DFPS staff helped her into bed, and she fell asleep.